

Application No. 10/029,553
Amd. Dated: September 28, 2005
Reply to Office Action mailed June 28, 2005

REMARKS/ARGUMENTS

Declaration

Applicant has amended claims 20, 31, 32, and 36 in order to more clearly define the present invention. Claims 37-41 have been canceled. Claim 42 has been added, and is directed to the invention of previous claim 41 recited in independent form. Applicant expressly reserves the right to seek patent protection for the original claims, the canceled claims and/or for all other claims supported by the above-identified application in one or more related applications.

Applicant submits that the amendments to the claims and specification do not add new matter to the application, as each of these features is clearly shown in the Drawings and/or is described in the specification as originally filed.

The Examiner has stated that the declaration of Matthew Birdsall filed on Nov. 22, 2004 under 37 C.F.R. 1.131 is ineffective to overcome the Alt et al. reference. Specifically, the Examiner states that the evidence submitted is insufficient to establish conception prior to the effective date of the reference. The Examiner further states that the declaration fails to contain an allegation that the acts relied upon to establish a date of invention prior to the date of the reference were carried out in this country or WTO member country, and the declaration is not signed by all of the inventors.

In response, applicant submits herewith a further declaration of inventor Matthew Birdsall to supplement the declaration of Matthew Birdsall filed on Nov. 22, 2004. The further declaration establishes that the acts referred to in the Nov. 22, 2004 declaration occurred in the United States of America prior to February 14, 1996. In addition, the further declaration of Matthew Birdsall establishes that he solely conceived on the manufacture and use of the stents having formed of struts that have substantially flat top sides, substantially flat bottom sides and substantially curved left and right sides, each of these features of the invention being recited in the independent claims of the subject patent application. Applicant submits that a signature of each of the inventors is not required and is not appropriate in this instance.

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In addition, applicant filed herewith a declaration of Dennis L. Brooks, under 37 C.F.R. 1.131, in order to provide evidence of complete disclosure of the invention to another and corroborate the acts declared to by Matthew Birdsall.

In light of the above, applicant submits that the Declarations of Matthew Birdsall and the Declaration of Dennis L. Brooks, are effective to establish that the invention claimed herein was reduced to practice prior to the effective date of the Alt et al. reference. Applicant therefore requests that each of the Examiner's rejections under 35 U.S.C. 103, based on Alt et al., be withdrawn.

Information Disclosure Statement

The Examiner has noted that the foreign patent cited in the information disclosure statement filed on January 25, 2005 was not considered since no copy was submitted by applicant. Applicant respectfully submits that the foreign patent is presently being obtained, and will provide a copy thereof under separate cover.

The Examiner has objected to the disclosure based on an informality therein. In response, applicant has amended the second full paragraph on page 12 to clarify that surfaces of the left and right sides of the strut exhibit substantially similar absolute radii of curvature, such as shown in Figs. 3A and 3B.

35 U.S.C. §102 Rejections

Claim 37, 38 and 40 have been rejected under 35 U.S.C. §102(e) as being anticipated by Summers (US Patent 6,080,191). While not conceding to the appropriateness of the Examiner's rejection, but in order to advance prosecution of the present application, applicant has now canceled claims 37-41, without prejudice. Applicant submits therefore that the rejection under 35 U.S.C. 102(e) is now moot and requests that it be withdrawn.

35 U.S.C. §103 Rejections

Claim 41 has been rejected under 35 U.S.C. §103(a) as being unpatentable over Alt et al (US Patent 5,843,117). Claims 20-25, 28, 31, 32, 36 and 39 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Summers '191, in view of Alt et al. '117.

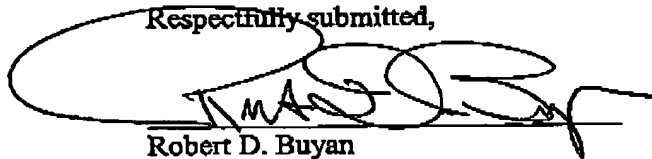
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New independent claim 42 is directed to the present invention defined in previous, now canceled, dependent claim 41.

Applicant respectfully submits that, on the basis of the Rule 131 declarations of Matthew Birdsall and Dennis L. Brooks, Alt et al. can no longer be relied upon as prior art and the stated grounds for rejection under 35 U.S.C. 103(a) must be withdrawn.

By the foregoing, all objections and grounds for rejection are believed to have been overcome. An issuance of a Notice of Allowance is earnestly solicited. If the Examiner feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at telephone (949)450-1750.

Respectfully submitted,



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